



**FIXED TERM EMPLOYMENT AGREEMENT
BETWEEN
FENTON CHARTER PUBLIC SCHOOLS & CARY RABINOWITZ, DIRECTOR**

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into and is effective as of July 1, 2017, ("Effective Date") by and between Cary Rabinowitz ("Employee") and Fenton Charter Public Schools ("FCPS"), a California non-profit public benefit corporation, which is a Charter Management Organization ("CMO") overseeing the operations of the Fenton charter schools, California public charter schools approved by the Los Angeles Unified School District ("District"). The Parties recognize that FCPS is not governed by the provisions of the California Education Code, except as expressly set forth in the Charter Schools Act of 1992.

RECITALS

- A. FCPS operates charter schools engaged in the business of educating children in Los Angeles County. FCPS desires to engage the services of Employee as a Full-Time Director.
- B. Employee desires to perform such services for FCPS on the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the promises and of the mutual covenants and agreements set forth herein, the Parties agree as follows:

A. EMPLOYMENT TERMS AND CONDITIONS

1. Duties

Employee is employed to serve as a Director and will perform such duties as are consistent with that position as well as such other duties as FCPS may reasonably assign and Employee will abide by all School policies and procedures as adopted and amended from time to time. Employee further agrees to abide by the provisions of FCPS' charters. Employee will devote his or her utmost knowledge and best skill to the performance of his or her duties. A copy of the job description for the above position is attached hereto and incorporated by reference herein. These duties may be amended from time to time in the sole discretion of FCPS.

2. **Term and Work Schedule**

FCPS hereby employs Employee for the term of the school year, commencing on **July 1, 2017** and ending **June 30, 2018**, unless terminated earlier pursuant to Section B of this Agreement. Workdays for Employee shall be consistent with the applicable calendar of workdays for this position. The current year schedule is attached and incorporated by reference herein. In addition, Employee shall attend all of the following: professional development days, staff meetings, parent meetings, orientation, and other school events as scheduled. Employee will not render services in person or by electronic means, paid or otherwise, for any other person or entity during contracted work hours with FCPS.

3. **Compensation**

Employee will receive an annual salary of \$104,895.00, less applicable payroll taxes and authorized deductions. Salary will be paid bi-weekly over a twelve (12) month period, beginning with the first period following the Effective Date. Employee is an exempt employee and therefore is not eligible for overtime pay.

4. **Employee Benefits**

Employee shall be entitled to participate in designated employee benefit programs and plans established by FCPS (subject to program and eligibility requirements) for the benefit of its employees, which from time to time may be amended and modified by FCPS in its sole discretion.

5. **Performance Evaluation**

Employee shall receive periodic performance reviews conducted by his/her supervisor in accordance with the FCPS evaluation policy. Failure to evaluate Employee shall not prevent FCPS from disciplining or dismissing Employee in accordance with this Agreement.

6. **Employee Rights**

Employment rights and benefits for employment at FCPS shall only be as specified in this Employment Agreement, FCPS's charters, the Charter Schools Act and FCPS' Employee Handbook, which from time to time may be amended and modified by FCPS. Employment rights and benefits may be affected by other applicable agreements or directives or advisories from the California Department of Education or State Board of Education. During the term of this Agreement, Employee shall not acquire or accrue tenure, or any employment rights with FCPS.

7. **Personnel Policies and Procedures**

FCPS shall have the authority to establish from time to time personnel policies and procedures in FCPS' Employee Handbook to be followed by its employees. Employee agrees to comply with the policies and procedures of FCPS. To the extent any provisions in FCPS' Employee Handbook differ with the terms of this Agreement, the terms of this Agreement shall apply.

8. **Licensure**

Employee understands that employment is contingent upon verification and maintenance of any applicable licensure and/or credentials.

9. **Child Abuse and Neglect Reporting**

California Penal Code section 11166 requires any child care custodian who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within thirty-six (36) hours of receiving the information concerning the incident.

By executing this Agreement, Employee acknowledges he or she is a mandatory reporter and is certifying that he or she has knowledge of California Penal Code section 11166 and will comply with its provisions. Employee acknowledges that FCPS has provided him or her with copies of California Penal Code Sections 11165.7, 11166 and 11167.

10. **Fingerprinting/TB Clearance**

Fingerprint clearance for Employee will be acquired through submitting the Employee's fingerprints to the California Department of Justice. FCPS will assume the cost of all fees related to the fingerprinting process. Employee will be required to submit evidence from a licensed physician that he/she was found to be free from active tuberculosis. Both clearances need to be in place prior to the first day of service.

11. **Conflicts of Interest**

Employee understands that, while employed by FCPS, he or she will have access to confidential and proprietary information. Employee therefore shall not maintain employment or contracts for employment, or engage in any consultant or independent contractor relationship, with any other agency or school that will in any way conflict with his/her employment with FCPS.

12. **Outside Professional Activities**

Upon obtaining prior written approval of the Executive Director, the Employee may undertake for consideration outside professional activities, including consulting, speaking, and writing. The outside activities shall not occur during regular work hours. FCPS shall in no way be responsible for any expenses attendant to the performance of such outside activities.

B. TERMINATION OF EMPLOYMENT

This Agreement and the employment of Employee shall terminate prior to its expiration date under the following conditions:

1. **Termination For Cause:** Employee's employment may be terminated by the Director of the School where he or she teaches at any time for cause. In addition, Employee may be disciplined (e.g. reprimand, suspension without pay) for cause during the term of this Agreement. FCPS has "cause" to terminate Employee's employment for the reasons listed below:

- i. Employee fails or refuses to faithfully and diligently perform the usual and customary duties of his or her employment which failure or refusal is not cured within thirty (30) days after written notice thereof is given to Employee; or
- ii. Employee fails or refuses to comply with the policies, standards and/or rules of FCPS which from time to time may be established; or
- iii. Employee fails or refuses to act in accordance with any lawful direction or order of FCPS; or
- iv. It is determined that Employee has conducted himself or herself in an unprofessional, unethical, illegal or fraudulent manner, or has acted in a manner detrimental to the reputation, character or standing of FCPS; including, but not limited to, theft or misappropriation of FCPS' assets, engaging in unlawful discriminatory or harassing conduct, working while under the influence of alcohol or illegal drugs, the filing of false expense or related reports, or being convicted of a felony; or
- v. Employee violates any term or condition of this Agreement.

FCPS shall not terminate this Agreement pursuant to this paragraph until a written statement of the grounds of termination has first been provided to Employee by the School Director. Employee shall have the right to have a conference with the School Director and/or Executive Director to discuss the proposed termination for cause and shall further have the right to a representative of his/her choice at the conference. Such conference shall be Employee's exclusive right to any hearing otherwise required by law. Any decision regarding termination shall be final.

2. **Early Termination without Cause:** FCPS may unilaterally, and with or without cause or advance notice, terminate this Agreement and Employee's employment by providing written notice from FCPS to Employee that his or her employment is being terminated for "other than cause".

3. **Revocation/Nonrenewal of Charter:** In the event that the FCPS charters with the District are either revoked or non-renewed, this Agreement shall terminate immediately upon the effective date of the revocation/nonrenewal of the charters, and without the need for any termination process outlined herein.

4. **Death or Permanent Disability of Employee:** The death of Employee shall terminate this Agreement and all rights provided under this Agreement. In the event that Employee becomes permanently disabled FCPS may terminate this Agreement. Employee shall be deemed to be permanently disabled when, in the judgment of FCPS, Employee may no longer perform the essential functions of his/her job with or without reasonable accommodation, as set forth in the job specifications.

C. COMPENSATION UPON TERMINATION

1. **For Cause:** In the event Employee's employment is terminated for cause, he/she shall receive written notice that his/her employment is terminated and shall receive compensation at his/her salary level through the termination date. Employee is entitled to no other severance compensation when he/she is terminated for good cause.

2. **For Other Than Good Cause:** In the event Employee's employment is terminated for other than good cause, he/she shall receive severance compensation of one (1) month's salary at his/her then-current salary level, so long as Employee signs a release of all claims against FCPS and all related individuals and entities on a release form provided by FCPS. Employee is entitled to no other severance compensation when he/she is terminated pursuant to Section B(2) above.

3. **Revocation/Non-Renewal of Charter:** In the event that Employee's employment is terminated due to the revocation or non-renewal of FCPS Charters, FCPS' obligations hereunder shall terminate after paying employee any compensation owed through the last day he/she worked.

4. **Death or Permanent Disability:** In the event Employee dies or becomes permanently disabled as defined in this Agreement, FCPS' obligations hereunder shall terminate after paying Employee any compensation owed through the last day he/she worked.

D. NON-RENEWAL/EXPIRATION OF TERM. FCPS may elect not to offer future employment agreements to Employee at its sole discretion, without cause, and this Agreement will lapse by its own terms.

E. CONFIDENTIAL INFORMATION

All confidential information of FCPS that Employee has knowledge of or access to shall be the exclusive property of FCPS both during and after Employee's employment. Employee shall not, directly or indirectly, disclose or use any confidential information other than for the sole benefit of FCPS, either during Employee's employment or at any other time thereafter, without the prior written consent of FCPS, except to the extent that such use or disclosure is made by reason of Employee's job responsibilities.

Employee shall not take any confidential information that is in written form, computerized, machine readable, model, sample, or other form capable of physical delivery, upon or after termination of Employee's employment with FCPS without the prior written consent of FCPS. Upon the termination of Employee's employment with FCPS, Employee shall deliver promptly and return to FCPS all such materials, along with all other School property in the Employee's possession, custody, or control.

For the purposes of this section, "confidential information" shall mean all information, data, or knowledge regarding FCPS, its operations, employees, students, parents, contractors, or vendors not known generally to the public, including, but not limited to, research and development, trade secrets, existing or proposed computer or education programs, purchases, sales, student identifying information, financial and marketing information, lesson plans, business plans, fundraising strategies, or benefits information.

F. ARBITRATION/SOLE REMEDY FOR BREACH OF AGREEMENT. In the event of any dispute between FCPS and Employee concerning any aspect of the employment relationship, including any disputes relating to termination, all such disputes shall be resolved by binding arbitration before a single neutral arbitrator pursuant to the following terms. This provision shall supersede any prior arbitration agreement, policy or understanding between the parties. The parties intend to revoke any prior arbitration agreement.

1. **Claims Covered by the Agreement.** Employee and FCPS mutually consent to the resolution by final and binding arbitration of all claims or controversies ("claims") that FCPS may have against Employee or that Employee may have against FCPS or against its officers, directors, partners, employees, agents, pension or benefit plans, administrators, or fiduciaries, franchisors, or any parent, subsidiary or affiliated company or corporation (collectively referred to as "FCPS"), relating to, resulting from, or in any way arising out of Employee's employment relationship with FCPS and/or the termination of Employee's employment relationship with FCPS, to the extent permitted by law. The claims covered by this Agreement include, but are not limited to, claims for wages or other compensation due; claims for penalties or premium pay; claims for breach of any contract or covenant (express or implied); tort claims (including, but not limited to, those relating to performance or reputation); claims for discrimination, harassment, and/or retaliation (including, but not limited to, race, religious creed (which includes religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex (which includes pregnancy, childbirth, breastfeeding, and related medical conditions), gender, gender identity, gender expression, age, sexual orientation, military or veteran status, or any other consideration made unlawful by federal, state or local laws, ordinances, or regulations); claims for violation of any leaves of absence or accommodations laws; claims for wrongful termination or whistleblowing; claims for benefits (except where an employee benefit or pension plan specifies that its claims procedure shall culminate in an arbitration procedure different from this one); claims for violation of trade secret, proprietary, or confidential information laws; claims for unfair business practices; claims for invasion of privacy; and claims for violation of any public policy, federal, state, or other governmental law, statute, regulation, or ordinance.

2. **Claims Not Covered by the Agreement.** Claims Employee may have for workers' compensation (excluding discrimination claims under workers' compensation statutes, unemployment compensation benefits, or claims under the Private Attorney General Act of 2004 ("PAGA"), California Labor Code Sections 2699 et seq. are not covered by this Agreement.

3. **Required Notice of Claims and Statute of Limitations.** Arbitration may be initiated by Employee by serving or mailing a written notice to the Executive Director of FCPS. Arbitration may be initiated by FCPS by serving or mailing a written notice to Employee at his or her last known address. The notice shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. The written

notice shall be served or mailed within the applicable statute of limitations period set forth by federal or state law.

4. **Arbitration Procedures.**

- i. After demand for arbitration has been made by serving written notice under the terms of Section F(3) of this Agreement, the party demanding arbitration shall file a demand for arbitration with the office of Judicial Arbitration and Mediation Services ("JAMS") located in Los Angeles, California. The arbitrator shall be selected from the JAMS panel and the arbitration shall be conducted pursuant to JAMS policies and procedures. All rules governing the arbitration shall be the rules as set forth by JAMS. If the dispute is employment-related, the dispute shall be governed by JAMS' then current version of the national rules for the resolution of employment disputes. JAMS' then applicable rules governing the arbitration may be obtained from JAMS' website which currently is www.jamsadr.com.
- ii. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claim(s) asserted. The arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement, including but not limited to any claim that all or any part of this Agreement is void or voidable.
- iii. Either party may file a motion for summary judgment with the arbitrator. The arbitrator is entitled to resolve some or all of the asserted claims through such a motion. The standards to be applied by the arbitrator in ruling on a motion for summary judgment shall be the applicable laws as specified in Section F(4)(ii) of this Agreement.
- iv. Discovery shall be allowed and conducted pursuant to the then applicable arbitration rules of JAMS, provided that the parties shall be entitled to discovery sufficient to adequately arbitrate their claims and defenses. The arbitrator is authorized to rule on discovery motions brought under the applicable discovery rules.

5. **Application for Emergency Injunctive and/or Other Equitable Relief.** Claims by FCPS or Employee for emergency injunctive and/or other equitable relief relating to unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information shall be submitted to JAMS for emergency treatment. The parties agree that the JAMS administrator may select a neutral hearing officer (subject to conflicts) to hear the emergency request only. The hearing officer should be experienced in considering requests for emergency injunctive and/or other equitable relief. The hearing officer shall conform his consideration and ruling with the applicable legal standards as if this matter were heard in a court of law in the applicable jurisdiction for such a dispute.

6. **Arbitration Decision.** The arbitrator's decision will be final and binding. The arbitrator shall issue a written arbitration decision revealing the essential findings and conclusions

upon which the decision and/or award is based. A party's right to appeal the decision is limited to grounds provided under applicable federal or state law.

7. **Place of Arbitration.** The arbitration will be at a mutually convenient location that must be within 50 miles of Employee's last company employment location. If the parties cannot agree upon a location, then the arbitration will be held at JAMS' office nearest to Employee's last employment location.
8. **Representation, Fees and Costs.** Each party may be represented by an attorney or other representative selected by the party. Each party shall be responsible for its own attorneys' or representative's fees. However, if any party prevails on a statutory claim that affords the prevailing party's attorneys' fees, or if there is a written agreement providing for fees, the arbitrator may award reasonable fees to the prevailing party. FCPS shall be responsible for the arbitrator's fees and costs to the extent they exceed any fee or cost that Employee would be required to bear if the action were brought in court.
9. **Waiver Of Jury Trial/Exclusive Remedy.** Employee and FCPS knowingly and voluntarily waive any constitutional right to have any dispute between them decided by a court of law and/or by a jury in court.
10. **Waiver of Representative/Class Action Proceedings.** Employee and FCPS knowingly and voluntarily agree to bring any claims governed by this Agreement in his/her/its individual capacity and not as a plaintiff, class member or representative in any purported class or representative action. They further agree to waive any right to participate in any representative or class action proceeding related to any claims governed by this Agreement. FCPS and Employee also agree that the arbitrator may not consolidate more than one individual's claims, and may not otherwise preside over any form of representative or class action proceeding, including, but not limited to, any representative action under California Business and Professions Code Sections 17200 et seq. For purposes of this Agreement, the term "representative" used in this section specifically excludes any claims, causes of action, or actions brought under PAGA ("PAGA claims"). Accordingly, any PAGA claims must be pursued in the appropriate court of law. However, if either Employee or FCPS have other claims or actions against each other covered by this Agreement, then they agree that those non-PAGA claims must first be pursued in arbitration, regardless of which claims or actions were filed first. The pending court PAGA action shall be stayed pending full and final resolution of the arbitration pursuant to California Code of Civil Procedure Section 1281.2 and related law.

G. GENERAL PROVISIONS

1. Waiver of Breach

The waiver by either party, or the failure of either party to claim a breach of any provision of this Agreement, will not operate or be construed as a waiver of any subsequent breach.

2. Successors and Assigns

The rights and obligations of FCPS under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of FCPS.

Employee shall not be entitled to assign any of his rights or obligations under this Agreement.

3. **Amendments**

No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

4. **Entire Agreement.**

Employee acknowledges receipt of this Agreement and agrees that this Agreement represents the entire Agreement with FCPS concerning the subject matter hereof, and supersedes any previous oral or written communications, representations, understandings or Agreements with FCPS or any agent thereof. Employee understands that no representative of FCPS has been authorized to enter into any Agreement or commitment with Employee, which is inconsistent in any way with the terms of this Agreement.

5. **Notices**

Any notices required or permitted to be given under this Agreement shall be sufficient, if in writing, sent by overnight or registered mail to his or her residence in the case of Employee, or hand delivered to Employee, or to its principal office in the case of FCPS.

6. **Governing Law**

This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of California.

7. **Partial Invalidity**

If any provision of this Agreement is found to be invalid or unenforceable by any court, the remaining provisions herein will remain in effect unless such partial invalidity or unenforceability would defeat an essential business purpose of the Agreement.

H. ACCEPTANCE OF EMPLOYMENT

By signing below, the Employee declares as follows:

1. I have read this Agreement and accept employment with FCPS on the terms specified herein.
2. All information I have provided to FCPS related to my employment is true and accurate.
3. A copy of the job description is attached hereto.
4. This is the entire agreement between FCPS and me regarding the terms and conditions of my employment. This is a final and complete agreement and there

are no other agreements, oral or written, express or implied, concerning the subject matter of this Agreement.

Employee Signature:

Date:

Address:

Telephone:

Social Security Number:

FCPS Approval:

Date:

Executive Director, FCPS

***This Employment Agreement is subject to ratification
and approval by the Governing Board of FCPS.***

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